

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 38

November 16, 2005

SUBJECT: PROTOCOL ON THE COLLECTION OF DNA SAMPLES AT LAPD JAILS

PURPOSE: California Penal Code Section 296 was recently revised to expand the number of qualifying offenses that require offenders to provide Deoxyribonucleic Acid (DNA) samples and handprint impressions (i.e., palm impressions of each hand and right thumbprint). This revision adds offenders who have been arrested for certain crimes and those who have been convicted of any felony offense. The amended law provides a mechanism to identify certain offenders at an early stage who pose a threat to public safety, to ensure accurate prosecution and to exonerate the innocent. This Order outlines procedures for the collection of DNA and handprint impressions and implements the use of Penal Code Section 298.1 Admonishment Form.

PROCEDURE:

I. PENAL CODE SECTION 298.1 ADMONISHMENT FORM - IMPLEMENTED.

A. Use of Form. The form is used to inform individuals who are required to provide DNA and handprint impressions that a refusal is a violation of Penal Code Section 298.1 and to document such refusals.

B. Completion. The form shall be completed by either a detention officer supervisor or a sworn supervisor.

C. Distribution.

1 - Original, attached to Follow-up Report, Form 3.14 or with arrest report.

1 - Copy with Jail Custody Record.

2 - TOTAL.

II. PENAL CODE 296 - GUIDELINES. The DNA sample and handprint impressions shall be collected from the following individuals:

- * Adults arrested on or after November 3, 2004, for violations of Penal Code Sections 187 and 192(a), felony sex offenses requiring registration pursuant to

Penal Code Section 290 and attempts to commit these crimes;

- * Adults convicted of any felony offense;

Note: Samples are required even if the defendant receives a referral to Drug Court, a deferred entry of judgement, or Proposition 36 probation.

- * Adults convicted of any misdemeanor offense and have a prior felony conviction;
- * Adults who enter a misdemeanor plea conditioned upon the taking of a DNA sample and handprint impressions;
- * Adults currently required to register for felony or misdemeanor offenses pursuant to Penal Code Sections 290 and 457.1;
- * Adults currently on probation (felony or misdemeanor) or parole and have a prior felony conviction or a prior sustained petition for a felony;
- * Any person from out of state who is accepted into California for custody, probation or parole pursuant to interstate compact with a qualifying offense or prior felony record;
- * Federal prison inmates with a California or out of state qualifying offense who have a nexus to California (release in California) and the FBI Director approves;
- * Any person housed in a mental health facility or sex offender treatment program who has been charged with a felony offense; and,

Note: This includes individuals who are:

- * Found incompetent to stand trial;
 - * Found not guilty by reason of insanity;
 - * Found to be a mentally disordered sex offender;
or,
 - * Found to be a sexually violent predator.
- * Effective January 1, 2009, all felony arrestees will be required to provide a DNA sample and handprint impressions.

III. JAIL DETENTION OFFICER'S RESPONSIBILITIES. With the exception of juveniles and court bookings, the assigned detention officer shall evaluate all arrestees booked into

a Department jail facility to determine if a DNA sample and handprint impressions are required pertaining to Penal Code Section 296.

After an arrestee has been processed and identified via the Livescan Tenprinter, the Consolidated Criminal History Reporting System (CCHRS) will be queried and reviewed. If a "flag" appears on the report requiring a DNA sample or if one of the aforementioned criteria exists, the arrestee will be required to provide a DNA sample and handprint impressions. The arrestee will be informed of the requirement to provide a DNA sample, handprint impressions and the process of obtaining them.

A. Arrestee(s) Compliant in Providing DNA Sample and Handprint Impressions. If an arrestee is compliant, the detention officer shall obtain the DNA sample and handprint impressions and submit them to the Department of Justice (DOJ).

B. Arrestee(s) Non-Compliant in Providing DNA Sample and Handprint Impressions. If the arrestee refuses to comply to provide a DNA sample and handprint impressions, the detention officer shall immediately notify a detention officer supervisor or a sworn supervisor. The supervisor shall read to the non-compliant arrestee, the admonishment from the Penal Code Section 298.1 Admonishment Form. If the arrestee continues to be non-compliant, the supervisor shall attempt to obtain the arrestee's signature for refusal and ensure the form is completed. The non-compliant arrestee shall be transported to the Los Angeles County Sheriff Department's Inmate Reception Center and may be forced to provide the DNA sample and handprint impressions by Sheriff personnel.

Note: The Area responsible for the booking of the non-compliant arrestee shall be responsible to transport the arrestee to the Los Angeles County Sheriff Department's Inmate Reception Center to obtain the DNA sample and handprint impressions.

- C. Request for Filing Charges of Refusals to Provide DNA Sample and Handprint Impressions.** In order to seek an additional filing charge for the refusal to provide a DNA sample and handprint impressions, the detention officer shall either complete a Follow-up Investigation Report, Form 3.14, or an arrest report to document the refusal.

A Follow-up Investigation Report, Form 3.14, shall be completed and approved by a detention officer supervisor or a sworn supervisor for:

- * All open charge misdemeanor arrests requiring no follow-up investigations; and,
- * All open charge felony arrests and open charge misdemeanor arrests requiring follow-up investigations.

An arrest report shall be completed by the detention officer and approved by a sworn supervisor on all warrant arrests.

- D. Distribution of Reports.** The detention officer shall forward the originals and copies of the approved reports to the appropriate entities.

- IV. SUPERVISOR'S RESPONSIBILITIES.** Upon notification by a detention officer of an arrestee's refusal to provide a DNA sample and handprint impressions, a detention officer supervisor or a sworn supervisor shall:

- * Read the admonishment from the Penal Code Section 298.1 Admonishment Form to the non-compliant arrestee and ensure the form is properly completed; and,
- * Review and approve any Follow-Up Investigation Reports or arrest reports completed by detention officers pertaining to the arrestees' refusals.

Note: Arrest reports shall only be approved by a sworn supervisor.

FORM AVAILABILITY: The Penal Code Section 298.1 Admonishment Form is attached for duplication and immediate use.

AMENDMENTS: This Order amends Sections 4/625.20 and 4/625.25 and adds Sections 4/630 and 4/630.10 to the Department Manual.

AUDIT RESPONSIBILITY: The Assistant to the Director, Office of Operations, shall monitor compliance with this directive in accordance with Department Manual Section 0/080.30.

WILLIAM J. BRATTON
Chief of Police

Attachment

DISTRIBUTION "D"